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**UNITED STATES DISTRICT COURT  
DISTRICT OF NORTHERN CALIFORNIA  
SAN FRANCISCO DIVISION**

COURTNEY MCMILLIAN and RONALD  
COOPER, on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

X CORP., f/k/a/ TWITTER, INC.,  
X HOLDINGS, ELON MUSK, DOES,

Defendants.

Case No. 3:23-cv-03461-TLT-RMI

**ADMINISTRATIVE MOTION FOR  
LEAVE TO FILE SUR-REPLY**

Hon. Trina L. Thompson

Date: June 18, 2024

2:00 pm PT

Magistrate Judge: Robert M. Illman

Pursuant to Civil Local Rules 7-3(d) and 7-11, Plaintiffs respectfully submit this Motion for Leave to File a Sur-Reply in Opposition to Defendants' Motion to Dismiss, attached here as "Exhibit A."

Defendants filed their Motion to Dismiss Plaintiffs' Amended Complaint on January 9, 2024. Dkt. 38. On February 9, Plaintiffs filed their Opposition to Defendants' Motion to Dismiss Plaintiffs' Amended Complaint. Dkt. 45. On February 23, Defendants filed a Reply in Support of their Motion to Dismiss ("Reply"). Dkt. 50. The Reply raises new arguments that were not raised in the opening papers. Specifically, Defendants argue for the first time that the Court should not

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1 consider the “Severance Matrix.” Reply at 5. Defendants also raise the new argument that by  
2 referencing the Merger Agreement, Plaintiffs’ ERISA Section 502(a)(2) claim was morphed into  
3 a state law claim for breach of contract which fails because Plaintiffs are not third-party  
4 beneficiaries of the Merger Agreement. Reply at 6, 8-9.

5 Plaintiffs intended to address the new arguments at the April 9th hearing. Dkt. 58.  
6 However, on April 3rd, the Court vacated the hearing. Dkt. 65. Therefore, Plaintiffs request that  
7 the Court ignore Defendants’ new arguments that were inappropriately raised in their Reply or  
8 grant Plaintiffs’ leave to file a short four-page sur-reply in order to respond to the new  
9 arguments. *U.S. v. Romm*, 455 F.3d 990, 997 (9th Cir. 2006) (declining to consider argument  
10 first raised in a reply); *Dytch v. Yoon*, 2011 WL 839421, at \*3 (N.D. Cal. Mar. 7, 2011) (“It is  
11 improper for a moving party to introduce new facts or different legal arguments in the reply brief  
12 than those presented in the moving papers”) (internal citations omitted); *Banga v. First USA, NA*,  
13 29 F. Supp. 3d 1270, 1276 (N.D. Cal. 2014) (“If a party raises a new argument or presents new  
14 evidence in a reply brief, a court may consider these matters only if the adverse party is given an  
15 opportunity to respond”) (internal citations omitted); *Tanious v. Gattoni*, 533 F. Supp. 3d 770  
16 (N.D. Cal. April 8, 2021) (granting leave to file a sur-reply to respond to argument raised in  
17 reply brief for the first time).

18 Plaintiffs’ proposed Sur-Reply to Defendants’ Motion to Dismiss Plaintiffs’ Amended  
19 Complaint is attached as Exhibit A.

1 DATED: April 9, 2024

Respectfully submitted,

2 Sanford Heisler Sharp, LLP

3 By: /s/ Kristi Stahnke McGregor

4 Kristi Stahnke McGregor, GA Bar No.  
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5 (admitted *pro hac vice*)

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 9, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a copy of this filing to all counsel of record.

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*Attorneys for Defendants X Corp.,  
X Holdings, and Elon Musk*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: April 9, 2024

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